IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 85 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VISHNUBHAI CHUNILAL AMIN

Versus

PREMJITSINGH RESHAMSINGH OJALA

Appearance:

MR SR PANDYA for GM AMIN for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 1
MR KM SHETH for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MR ND GOHIL APP for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/05/2000

ORAL JUDGEMENT

The petitioner herein claims ownership of the Muddamal motor vehicle i.e. the truck bearing registration No. GRR 3246, and challenges the judgment

and order dated 7th February, 1994, passed by the Additional City Sessions Judge, Ahmedabad, in Criminal Revision Application No. 231/93 under section 451 CRPC. The respondent no.1 is the complainant and the respondents nos. 2 and 3 are the accused.

On 19th December, 1992, the respondent no.1 (hereinafter referred to as 'the complainant') lodged a complaint against the respondents nos. 2 and 3 (hereinafter referred to as 'the accused) before the learned Metropolitan Magistrate, Ahmedabad. It was alleged that the accused no. 1 was the registered owner of the Muddamal truck and had agreed to sell the same to the complainant for a sum of Rs. 1 Lakh. Accordingly, an agreement was entered into on 1st December, 1992, and the payment of the said amount of Rs. 1 Lakh was also made. The complainant had also obtained Insurance papers and Transport Permit. Pursuant to the said sale, the Muddamal truck was placed in the possession of the complainant. However, on 19th December, 1992, both the accused approached the complainant in the company of two other unknown persons and forcibly took away the possession of the truck. The accused are thus alleged to have committed offences punishable under sections 420, 392 read with section 120 (b) IPC. Pursuant to the said complaint, Criminal Case being M.Case No. 51/92 was registered. In the said case, the petitioner herein made an application under section 451 CRPC for possession of the Muddamal truck pending trial. The petitioner contended that he was the registered owner of the Muddamal truck and he had purchased the same from his predecessor-in-title Lakshmanji Thakor, the accused no.1, on 24th September, 1991. That on 1st December, 1992, the petitioner was the owner of the truck and even in RTO records, the truck stood in the name of the petitioner. The accused no. 2 had no right, title or interest over the said truck and could not have sold it to the complainant.

Considering the rival contentions and the documentary evidence produced by the contestants, the learned Magistrate under his order dated 9th August, 1993, directed the Muddamal truck to be handed over to the petitioner herein on his executing a personal bond in the sum of Rs. 1,50,000/- and furnishing a surety for the like amount. Feeling aggrieved, the complainant preferred Criminal Revision Application No. 231/93 before the learned Additional City Sessions Judge, Ahmedabad. The learned Sessions Judge, under his judgment and order dated 7th February, 1994, reversed the order of the learned trial Judge and directed that the

Muddamal truck be handed over to the complainant on his executing a bond in the sum of Rs. 1,50,000/- and furnishing a surety for the like amount. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Pandya has submitted that in respect of disposal of the Muddamal motor vehicle, reference should be head to the provisions of the Motor Vehicles Act, and the RTO record should be considered to be the proof of the ownership. Accordingly, the petitioner, whose name has been entered into the RTO records should be considered to be the owner of the truck and the rightful claimant for possession pending trial. Besides, the accused no. 2 had never been the owner of the truck, nor had he any interest in the same. He, therefore, could not have transferred the said truck to the complainant or any other person. Through the transfer made by the said accused no.2, the complainant can not claim right of ownership or any other right over the said truck. In support of his arguments, Mr. Pandya has relied upon the judgments of this court in the matter of NANDIRAM NANDUMAL PARUMAL VS STATE OF GUJARAT & ORS (1966 {7} GLR 366); STATE OF GUJARAT VS NARESHBHAI @ NARANBHAI JIVANJIBHAI HARIJAN (1988 {2} 925). He has also relied upon the judgment of Mysore High Court in the matter of TC GOPALAN NAIR VS P.KELU (1974, CRLJ, 210), and judgment of Karnataka High Court in the matter of U.KARIYAPPA VS SREEKANTAIAH (1980 CRLJ 422).

Upon perusal of the record, I find that the petitioner has relied upon RTO entry (page 15 of the paper-book). The said entry evidences the transfer of the Muddamal truck from Lakshmanji Thakor, the accused no. 1, to the present petitioner on 25th September, 1991. However, the said entry has been made on 26th February, 1993. In respect of other papers, such as Insurance receipt, Motor Vehicle Tax Book etc. The petitioner has produced the certificate issued by the Police Sub Inspector, Dehgam Police Station (page-33 of the paper-book). The said certificate has been issued on 30th July, 1993, which states that the RTO Book, Tax Book, Fitness Tax, Insurance policy etc. in respect of truck bearing No. GRR 3246 had been lost by Lakshmanji Thakor and the loss had been recorded in the Police Station on 3rd January, 1993. As against that, the complainant has produced (as observed by the court below) the copies of the payment receipt, agreement, Insurance papers, transport permission, etc. Considering these documents, the learned Judge has observed that the entries made in the RTO record after the date of offence

is irrelevant for the purpose of deciding the question of disposal of the Muddamal under section 451 CRPC.

I do agree that while disposing of the Muddamal truck, the entries made in the RTO record should be considered as far as the ownership of the ownership of the vehicle is concerned. Similarly, no person can transfer the title in the property better than the one he has. However, in the present case, RTO entry relied upon by the petitioner is that of 23rd February, 1993 i.e. the date subsequent to the date of offence. No evidence has been produced by the petitioner to vouch-safe his ownership prior to the date of offence. As against that, the complainant has produced enough evidence to vouch-safe the transfer made to him on 1st December, 1992.

It is alleged that the said transfer was made by the original owner Lakshmanji Thakor. It, therefore, can not be said that the transfer was made by the person not having title to the truck. In the circumstances, it is required to be held that on the date of the offence, the complainant was in lawful custody and lawful possession of the Muddamal truck, and the petitioner has failed to prove his title to the truck on the date of the offence. In that view of the matter, I am in complete agreement with the reasons recorded by the revisional court. The order of handing over of the Muddamal truck to the complainant, pending trial, is absolutely just and proper.

In the result, the Revision is dismissed. The judgment and order dated 7th February, 1994, made by the learned Additional City Sessions Judge, Ahmedabad, in Criminal Revision Application No. 231/92 is confirmed. Stay granted earlier is vacated. Rule is discharged.

At the request of Mr. Pandya, the operation of this judgment and order is stayed for a period of four weeks from today with a view to enabling the petitioner to challenge this judgment and order further.

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JOSHI